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Jerry W. Herndon IBM Corporation, T81/062 PO Box 12195 Research Triangle Park, NC 27709			ROMANO, JOHN J	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/042,794  
Filing Date: January 09, 2002  
Appellant(s): BELL ET AL.

Elizabeth Stanek  
For Appellant

**EXAMINER'S ANSWER**

**MAILED**  
**FEB 28 2006**  
**Technology Center 2100**

This is in response to the appeal brief filed 12/27/2005 appealing from the Office action mailed 8/25/2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,728,877	Mackin et al.	04-2004
5,969,704	Green et al.	10-1999
6,757,720	Weschler	06-2004
6,430,622	Aiken	08-2002

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-3, 7-11, 14-16, 18-20, 24-26 and 28 are rejected under 35 U.S.C. §102(e) as being anticipated by United States Patent No. 6,728,877 to Mackin et al. (hereinafter "Mackin").
2. Claims 12, 13 and 17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Mackin in view of United States Patent No. 5,969,704 to Green et al. (hereinafter "Green").
3. Claims 4, 6, 21 and 22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Mackin in view of United States Patent No. 6,757,720 to Weschler (hereinafter "Weschler").

4. Claims 5 and 23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Mackin in view of Weschler and in further view of obviousness.

5. Claims 29, 30 and 31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Mackin in view of United States Patent No. 6,430,622 to Aiken (hereinafter "Aiken").

#### **(10) Response to Argument**

Appellants arguments filed December 27<sup>th</sup>, 2005, have been fully considered but they are not persuasive. For example,

I (A) **As to Claims 1, 10, 18 and 19**, Appellant contends (Page 9, second paragraph of the appeal brief), that "Nothing in *Mackin* discloses or suggests that the instruction to create the file comes from an external agent," wherein Appellants submit that at least the highlighted portions of Amended claim 1 are neither disclosed nor suggested (page 9, first paragraph of the appeal brief), which Examiner strongly disagrees. However, Appellants recognized that *Mackin* uses Object Linking and Embedding (OLE), to implement some portion of the system and interacts with a user interface, for example, a keyboard or mouse (Brief, Page 9, second paragraph) as provided in the Final Office Action mailed 6/2/2005 (See page 9, Claim 3). It should be noted that Appellants define such an "external agent" in the originally filed specification at paragraph [0018], (underline for emphasis):

*In preferred embodiments, this technique is initiated by the receipt of an asynchronous command from an external agent. By way of example, such initiation may be the result of the execution of a batch file containing a scripted command, an automatic system scheduler which operates at a predefined time (such as at the startup of the host computer system) to execute scheduled executable products, or manual insertion of a command by an individual through an input device such as a keyboard or computer console.*

As provided in the previous Final Rejection and acknowledged by Appellant (Brief, page 9, second paragraph) *Mackin* discloses:

*An OLE or ActiveX control is an object that accepts and responds to events, such as a selection by a mouse or a key on a keyboard, or a selection by another object oriented member function. (See Mackin, Column 8, lines 9-12).*

Therefore, *Mackin* clearly teaches responding to an external agent as defined by the Appellant. Thus, Appellant's contend with the highlighted portion ("...external agent...") has been at least implicitly disclosed by *Mackin*.

Furthermore, *Mackin* teaches instructing from an external agent as claimed.

Claim 1 states in part:

"...instructing from an external agent, the first executable product to provide a file containing selected configuration data..."

Appellant then concluded (Brief, page 9, second paragraph, last sentence), that *Mackin* teaches away from waiting for an instruction from an external agent before creating the file containing the configuration data as recited in amended Claim 1, by reciting "automatically" and which Examiner respectfully disagrees. Examiner agrees that *Mackin* teaches a method to automatically transition configuration files; however, that process is inherently invoked or started by an instruction from an external agent. *Mackin* explicitly discloses OLE as acknowledged by the Appellant, as noted above, and further disclosed:

*"The user interface application is used for preparing an extraction plan and a transition plan to extract and transition configuration settings from a source computer system for a target computing system (E.g., see Mackin, Column 3, lines 37-41, emphasis added).*

Thus, the fact that *Mackin* teaches an automated process, does not imply that it is not started by an instruction from an external agent. In fact, *Mackin* explicitly teaches a user interface, to instruct the transition with user implemented transition rules. The fact that the transition plan interfaces with the user means that it receives user input or instruction. *Mackin*, at least, implicitly teaches externally launching an application via the OLE as when a OLE embedded object selected by a mouse (See *Mackin*, Column 8, line 9-12), for example, via a user interface, the application (software object) associated with it is launched (responds) as taught by *Mackin* (Column 7, lines 46-54). Therefore, although *Mackin* does not explicitly disclose launching an application to provide a file, it is inherent in his teaching as he discloses a user interface and the

application inherently needs to be instructed from an external agent to automatically migrate configuration files.

Based on Appellant's arguments, the Examiner can only assume that the Appellant is interpreting automatic to be programmatically. Even arguendo, if the transition program didn't have a user interface and performed the transition at a pre-programmed time, pre-defined by the developer. The developer would have had to instruct the program to do so, wherein the instruction from the developer or external agent would be received by the computer or first executable product.

Accordingly, Independent claims 10, 18 and 19 are not patentable over *Mackin* for at least the reason discussed above.

I (B) **As to claim 3**, as a preliminary note, responding to Appellant's statement that the Office Action makes many statements that imply that certain aspects of the present invention are "inherent" or "common practice". Appellant explicitly cites "See e.g., Office Action, page 3, paragraph 5" (Brief, page 10, first paragraph). Examiner would like to note that there are only three, (3), paragraphs on page 3 of the Final Office Action. Furthermore, in regard to the "inherency" statement, Appellant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Appellant then argues, "As discussed above with respect to Claim 1, nothing in Mackin discloses or suggests receipt of a command from an external agent as recited



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in, for example, Claim 1. Accordingly, it follows that nothing in *Mackin* discloses or suggests modifying the first executable product to respond to the command", which Examiner disagrees. As noted above, in section (A), with respect to claim 1, *Mackin* explicitly discloses a command from an external agent (keyboard input) as recited. *Mackin* then explicitly discloses a user interface to set up the migration, as addressed above, in section (A); wherein as claimed by the Appellant, "the first executable product" provides a file for, or migrates a file to, the "second executable product". The Examiner interprets claimed "first executable product" as the computer executing code modules which migrate the file to the second computer or "second executable product". Thus, the first computer receives the keyboard input from the user interface disclosed by *Mackin* and automatically responds to the command from the external agent to perform the method as disclosed. Therefore, *Mackin* clearly discloses "...receipt of a command from an external agent" as recited in claim 3.

II (A) **As to claims 12, 13 and 17**, wherein Appellant asserts that there is no motivation or suggestion to combine the cited references (Brief, page 11, Section II (A), second paragraph) as suggested in the Office action, the examiner strongly disagrees. In response to Appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

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the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is old and well known in the art to run batch files in order to "... save time, resources, improve transition quality, and reduce user frustration" as disclosed by *Mackin* (E.g., see Column 3, lines 48-50). Furthermore, *Mackin* states throughout his application that his objective is to automate the transition process, which is implicit motivation to automate any and all parts of the process possible, e.g. batch files. Additionally, the common definition of a batch file is a file containing a sequence of commands which are executed (See e.g., Microsoft dictionary, Google). *Mackin* discloses the definition of a batch file (Column 14, lines 13-15) "The injection application 24 reads and executes the list of commands from the transition package (batch file) to transition configuration to the target computing system 26.", wherein a sequence of commands are executed from a file (transition package). Thus, if not explicitly, *Mackin* at least implicitly, discloses executing from a batch file.

In response to Appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning or subjective belief and unknown authority (Brief, page 12, second paragraph), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA

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1971). Thus, the examiner reasserts the rejections of claims 12, 13 and 17, base on reply above.

In response to Appellant's argument that "Nothing in the cited references or the art itself would motivate a person of skill in the art to combine..." the references (Brief, page 12, third paragraph), the Examiner respectfully disagrees. As noted above in section II (A), there is sufficient motivation for one of ordinary skill in the art to combine the references.

II (B) **As to dependent claims 4, 6, 21 and 22**, wherein Appellant contends that the examiner used hindsight reasoning, the examiner strongly disagrees. For example, *Mackin* teaches the use of functions and OLE and user interface in which parameters are inherently a part of, as discussed above. As stated in the Final Office Action, mailed June 02<sup>nd</sup>, 2005, page 15, claim 4:

**Mackin** and **Weschler** are analogous art because they are both concerned with the same field of endeavor, namely a method to programmatically configure a new software application. Therefore, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to combine plug-in modules with **Mackins** method of configuring a application. The motivation to do so would have been to enhance, override or overload basic functionality and behavior of an existing program implemented as built-in functions (**Weschler**, Column 11,

line 20). Furthermore, **Mackin** teaches plug-in modules to increase functionality as well. (Column 6, lines 16-22).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, it is old and well known that a plug-in increases functionality and enhances basic functionality.

II (C) In response to Appellant's argument that nothing in Aiken appear to disclose or suggest the first executable product being OROUTED and the second executable product being OMPROUTE (Brief, page 13, last paragraph), the Examiner respectfully disagrees. As recited in claims 29-31:

*"...the first executable product comprises OROUTED and the second executable product comprises OMPROUTE."*

*Aiken* discloses (E.g., see Figure 1, Column 17, lines 24-26), wherein OROUTED and OMPROUTE routing daemons are disclosed, wherein the Examiner interprets the disclosure of two separate routing daemons (blocks of code) as a first and second

executable product. Therefore, without further explanation from Appellant, the above limitation is taught as disclosed.

### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

The following ground(s) of rejection are applicable to the appealed claims and were set forth in the Office Action mailed June 2, 2005:

### **DETAILED ACTION**

#### **Remarks**

1. Applicant's amendment and response received March 17<sup>th</sup>, 2005, responding to the December 17<sup>th</sup>, 2004, Office action provided in the rejections of claims 1-28. Claims 1-31 remain pending in this application and which have been fully considered by the examiner.

Examiner withdraws the 101 rejection of claims 10-17, corresponding to applicants amendments to recite a "computer program product".

Applicant arguing for the claims being patentable over Mackin (see pages 10-14 of the amendment and response) primarily based on assertions on page 11, where applicant contends that independent claims 1, 10, 18 and 19 are not anticipated by *Mackin*, as *Mackin* does not disclose that the first executable product is instructed, from an external agent, as amended, and arguments pertaining to the dependent claims are not persuasive, as will be addressed under Prior Art's Arguments – Rejections section at item 2 below. Accordingly, Applicants' amendment necessitated additional clarifications, in light of the rejection of the claims over prior art provided in the previous Office action, to further point out that Mackin also discloses as such claimed limitations as now amended which will be provided and/or addressed under the item 2 below. Thus, the rejection of the claims over prior art in the previous Office action is maintained in light of the necessitated additional clarifications provided hereon and **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Prior Art's Arguments – Rejections***

2. Applicant's arguments filed March 17<sup>th</sup>, 2005, in particular on pages 10-14, have been fully considered but they are not persuasive. For example,

(1) As to Claim 1, Applicant contends that *Mackin* does not disclose that the first executable product is instructed, from an external agent, to provide a file containing selected configuration data, as the instance application has recited and/or indicated in Claim 1, which examiner strongly disagrees. However, while Applicants recognized that *Mackin* uses OLE to implement some portion of the system and interacts with a user interface, for example, a keyboard or mouse (See page 10, last paragraph, of the amendment and response). Applicant, then concluded that *Mackin* teaches away from waiting for an instruction from an external agent before creating the file containing the configuration data as recited in amended Claim 1, by reciting "automatically" and which examiner strongly disagrees. Examiner agrees that *Mackin* teaches a method to automatically transition configuration files; however, that process is inherently invoked or started by an instruction from an external agent. *Mackin* explicitly discloses OLE as acknowledged by the Applicant, and further discloses a user interface application used for preparing an extraction plan (E.g., see Column 3, lines 37-41) and a transition from a source computing system to a target computing system. Thus, the fact that *Mackin* teaches an automated process, does not imply that it is not started by an instruction from an external agent or an instruction from the user interface manually. *Mackin* implicitly teaches externally launching an application via the OLE as when a OLE embedded object is double clicked, for example, via a user interface, the application associated with it is launched. Therefore, although *Mackin* does not explicitly disclose launching an application to provide a file it is inherent in his teaching as the application needs to be invoked to automatically migrate configuration files.

(2) Accordingly, Independent claims 10, 18 and 19 are not patentable over *Mackin* for at least the reasons discussed above. As per

claim 10, "...computer readable program code configured to arrange...to write...", is disclosed by Mackin (E.g., see Figure 4 & Column 7, lines 20-33), wherein computer readable program code is arranged and transitioned (write) to the new computing system and "...computer readable program code configured to obtain, responsive to the received command...", (E.g., see Figure 4 & Column 7, lines 54-60), wherein it is inherent that a function call is responsive to a received command and is computer readable program code.

(3) As to claim 3, the examiner reasserts that a user interface is an external agent as well as a function call and practices and procedures in the field of COM and DCOM as taught by *Mackin* (Column 7, lines 45-65). Likewise, claim 18 "...configured to output..." is addressed by the response in claim 10 as the equivalent to write. Likewise, claim 19 is addressed by the limitations of claim 1, wherein "...responsive to a command from an external agent..." is the equivalent to instructing a first executable code to respond to a command from an external agent as claimed in claim 1.

(4) As to claims 12, 13 and 17, wherein Applicant asserts that there is no motivation or suggestion to combine the cited references as suggested in the Office action, the examiner strongly disagrees. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is old and well known in the art to run batch files in order to "...save time, resources, improve transition quality, and reduce user frustration" as disclosed by *Mackin* (E.g., see Column 3, lines 48-50). Furthermore, *Mackin* states throughout his application that his objective is to automate the transition process, which is implicit motivation to automate any and all parts of the process possible. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Thus, the examiner reasserts the rejections of claims 12, 13 and 17.

(5) As to dependent claims 4, 6, 21 and 22, wherein Applicant contends that the examiner used hindsight reasoning, the examiner

strongly disagrees. For example, Mackin teaches the use of functions and OLE and user interface in which parameters are inherently a part of as discussed above. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(6) Applicant's arguments with respect to claims 29-31 have been considered and rejected as discussed below in the rejection.

### ***Claim Rejections***

3. Claims 1-31, are pending claims, stand finally rejected in light of the additional clarifications provided and/or addressed at item 2 above, Prior Art's Arguments – Rejections, as claims 1-3, 7-11, 14-16, and 18-20 are unpatentable over Mackin. Claims 12, 13 and 17 are unpatentable over Mackin in view of Green and claims 4, 6, 21 and 22 are unpatentable over Mackin in view of Weschler. The claim rejections from the previous office action of December 17<sup>th</sup>, 2004 are included corresponding to the pending claims. Claims 29-31 are rejected according to rejection below.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims **1-3, 7-11, 14-16** and **18-20** are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Mackin et al., US 6,728,877 (hereinafter **Mackin**).

3. In regard to claim **1**, **Mackin** discloses:



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- *"A method of migrating configuration data from a first executable product to a second executable product..."*, (E.g., see Figure 1 & Column 4, lines 14-17).
  - *"...instructing, from an external agent the first executable product to provide a file containing selected configuration data..."*, (E.g., see Figure 3 & Column 7, lines 20-22), wherein the first executable product is the combination of the extraction application and the application on the source computer, wherein the process is inherently invoked or started by an instruction from an external agent
  - *"...and producing, by the first executable product, the file containing the selected configuration data in a format acceptable to the second executable product."*, (E.g., see Figure 3 & Column 7, lines 22-33).
4. In regard to claim 2, the rejection of base claim 1 is incorporated. **Mackin** further discloses:
- *"...reading the file by the second executable product; and configuring the second executable product for operation using the selected configuration data contained in the file."*, (E.g., see Figure 6B & Column 14, lines 40-45), wherein it is inherent, that after the configuration settings are infused, the second executable file will utilize and thus read them.
5. In regard to claims 3, the rejection of base claim 1 is incorporated. Furthermore **Mackin** discloses:
- *"...modifying the first executable product to respond to a command by an external agent..."*, (E.g., see Figure 3 & Column 8, lines 9-12), wherein the first executable product would be responding to an external event, such as a key on a keyboard.
6. In regard to claim 7, the rejection of base claim 1 is incorporated. **Mackin** further discloses:
- *"...modifying the file produced by the first executable product, wherein additional data is incorporated into the file for purposes of configuring the second executable product."*, (E.g., see Figure 7 & Column 15, lines 11-26), wherein the configuration settings or configuration file produced by the first executable product is reformatted to conform with the target.
7. In regard to claim 8, the rejection of base claim 7 is incorporated. **Mackin** further discloses:
- *"...performed by editing the file."*, (E.g., see Figure 4 & Column 9, lines 49-57), wherein the user edits the file before it is applied to the target computing system.
8. In regard to claim 9, the rejection of base claim 7 is incorporated. **Mackin** further discloses:
- *"...a third executable product."*, (E.g., see Figure 7 & Column 15, lines 19-26), wherein the preparation application is the third executable product.
9. In regard to claim 10, the rejections of claim 1 and 3, are incorporated. Furthermore, **Mackin** discloses:

- "...a function for..." (E.g., see Figure 4 & Column 7, lines 54-60), wherein it is inherent that the steps described by **Mackin** are implemented in objects in his object-oriented embodiment, in order to be effective.
- "...computer readable program code configured to obtain, responsive to the received command..." (E.g., see Figure 4 & Column 7, lines 54-60), wherein it is inherent that a function call is responsive to a received command and is computer readable program code.
- "...computer readable program code configured to arrange...to write..." (E.g., see Figure 4 & Column 7, lines 20-33), wherein computer readable program code is arranged and transitioned (write) to the new computing system.
- 10. In regard to claim **11**, the rejections of claim **3** and base claim **10**, are incorporated.
- 11. In regard to claim **14**, the rejection of base claim **10** is incorporated. **Mackin** further discloses:
  - "...*the external media are persistent.*" (E.g., see Column 15, line 19).
- 12. In regard to claim **15**, the rejection of base claim **10** is incorporated. **Mackin** further discloses:
  - "...*disk files.*" (E.g., see Column 5, line 63 – Column 6, line 1).
- 13. In regard to claim **16**, the rejection of base claim **10** is incorporated. **Mackin** further discloses:
  - "...*data is obtained from one or more internal control blocks.*" (E.g., see Column 5, lines 50-67).
- 14. In regard to claim **18**, the rejections of claims **3**, **10** and **15** are incorporated. Furthermore, **Mackin** discloses:
  - "...configured to output the file to a selected location..." (E.g., see Figure 7 & Column 6, lines 1-6), wherein, "distributing among multiple interconnected processing systems" inherently involves outputting data or a file to a different or selected location.
  - "...computer readable program code means configured to read being contained in the second computer process." (E.g., see Figure 7 & Column 6, lines 35-37).
- 15. Claim **19** is a system version of the method claim of claim **2**. Thus, the rejections of claim **2** are respectively incorporated in claim **19**.
- 16. Claim **20** is a system version of the method claim of claim **10**. Thus, the rejections of claim **10** are respectively incorporated in claim **20**.
- 17. In regard to claim **25**, the rejections of base claim **19** are incorporated. Furthermore, **Mackin** discloses:
  - "...second computer product is a replacement for the first computer product..." (E.g., see column 1, lines 24-26).

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims **12**, **13** and **17** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Mackin** in view of Green et al., US 5,969,704 (hereinafter **Green**).

20. In regard to claim **12**, the rejection of base claim **10** is incorporated. But **Mackin** does not disclose expressly "...a batch file.". However, **Green** discloses:

- "...a batch file." (E.g., see Figure 6 & Column 4, lines 18-19).

**Mackin** and **Green** are analogous art because they are both concerned with the same field of endeavor, namely executable software on a computer apparatus. Therefore, it would have been obvious to someone of ordinary skill in the art, at the time the invention was made, to implement a batch file to perform **Mackin's** method wherein, the external agent is a scripted command issued through execution of a batch file. The motivation to do so was taught by **Mackin's** disclosure of the transition application programmers interface or (API), (Column 6, lines 38-51). **Mackin** further teaches scripted files and file system I/O, which also implies batch files (Column 8, lines 9-12). Thus, it would have been obvious, to a person of ordinary skill in the art, to implement a scripted command by execution of a batch file.

21. In regard to claim **13**, the rejection of base claim **10** is incorporated. But **Mackin** does not disclose expressly "...a system scheduler that issues the command at a predetermined time.". However, **Green** discloses:

- "...a system scheduler that issues the command at a predetermined time." (E.g., see Column 4, line 64 – Column 5, line 37).

22. In regard to claim **17**, the rejection of base claim **16** is incorporated. But **Mackin** does not disclose expressly "...constructed by the first executable code using configuration files and command line parameters". However, **Green** discloses:

- "...constructed by the first executable code using configuration files and command line parameters.", (E.g., see Column 5, lines 1-50), wherein the schedule file is interpreted as a configuration file and the file is transferred to RAM or internal control block, (Column 6, line 11), where it is processed.

23. Claims **4**, **6**, **21** and **22** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Mackin** in view of **Weschler, Jr.**, US 6,757,720 B1 (hereinafter **Weschler**).

24. In regard to claim **4**, the rejection of base claim **1** is incorporated. But **Mackin** does not disclose expressly "...*providing a parameter recognized by the first executable product*". However, **Weschler** discloses:

- "...*providing a parameter recognized by the first executable product*." (E.g., see Figure 3 & Column 10, line 66 – Column 11, line 24), wherein modules are plugged in by specifying a parameter.

**Mackin** and **Weschler** are analogous art because they are both concerned with the same field of endeavor, namely a method to programmatically configure a new software application. Therefore, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to combine plug-in modules with **Mackin's** method of configuring a application. The motivation to do so would have been to enhance, override or overload basic functionality and behavior of an existing program implemented as built-in functions (**Weschler**, Column 11, line 20). Furthermore, **Mackin** teaches plug-in modules to increase functionality as well. (Column 6, lines 16-22).

25. In regard to claim **6**, the rejection of base claim **4** is incorporated. Furthermore **Weschler** discloses:

- "...*recognized during normal operation of the first executable product*.", (E.g., see Figure 3 & Column 11, lines 10-24).

26. In regard to claim **21**, the rejections of base claim **19** are incorporated. Furthermore **Weschler** discloses:

- "...*internal tables*.", (E.g., see Figure 3 & Column 7, lines 48-51).

27. In regard to claim **22**, the rejections of base claim **19** are incorporated. Furthermore **Weschler** discloses:

- "...*file*.", (E.g., see Figure 3 & Column 7, lines 52-55).

28. Claims **5** and **23** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Mackin** in view of **Weschler** and further in view of obviousness.

29. In regard to claim **5**, the rejection of base claim **4** is incorporated. But **Weschler** does not disclose expressly "...*recognized at initial startup of the first executable product*." However, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, through **Weschler's** teaching of initializing the plug-in modules via a parameter, when the configuration manager object is instantiated (E.g., see Column 11, lines 5-8), to implement this method upon start-up. It is common practice and would have been obvious to one of ordinary skill in the art, at the time the invention was made to initialize any program upon start-up as this feature has been an option in most operating systems. The motivation to do so would have been to extend the functionality of the method

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disclosed by **Mackin**, by implementing a common and well known method of parameter initialization upon start-up.

30. In regard to claim **23**, the rejections of base claim **19** and claim **5** are incorporated.

31. Claims **29**, **30** and **31** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Mackin** in view of Aiken JR., et al., US 6,430,622 B1 (hereinafter **Aiken**).

32. In regard to claim **29**, the rejections of base claim **1** are incorporated. But, **Mackin** does not expressly disclose "...the first executable product comprises *OROUTED* and the second executable product comprises *OMPROUTE*". However, **Aiken** discloses:

"...the first executable product comprises *OROUTED* and the second executable product comprises *OMPROUTE*." (E.g., see Figure 1, Column 17, lines 24-26), wherein *OROUTED* and *OMPROUTE* routing daemons are disclosed.

**Mackin** and **Aiken** are analogous art because they are both concerned with the same field of endeavor, namely migrating data from one computer to another on a network. Therefore, it would have been obvious to someone of ordinary skill in the art, at the time the invention was made, to implement a batch file to perform **Aiken's** method with **Mackin's** method of data migration. The motivation to do so was taught by **Mackin's** disclosure of the transition application programmers interface or (API), (Column 6, lines 38-51). **Aiken** further teaches TCP and setting up a connection between two endpoints (Column 1, lines 21-23). Thus, it would have been obvious, to a person of ordinary skill in the art, to implement routing daemons with **Mackin's** method of data migration.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

John Romano

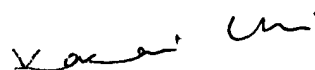
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